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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,459	10/16/2001	Michael H. D'Amico	13251US01	5919

7590 07/25/2008  
Ronald E. Larson  
McAndrews, Held & Malloy, Ltd.  
34th Floor  
500 W. Madison Street  
Chicago, IL 60661

EXAMINER
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MCCULLOCH JR, WILLIAM H

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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07/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### ATTACHMENT

1. Proposed amendments received 7/14/2008 will not be entered because 1) they raise new issues requiring further consideration and/or search and 2) are not deemed to place the application in better form for allowance or appeal.

2. Applicant argues on page 7 of the Remarks that the proposed amendments should be entered as provided in 37 CFR §1.116(b)(3), which states that amendments after final rejection may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented. Applicant further argues that “the amendments are necessary in light of the Examiner’s most recent explanation of the grounds [of] rejection, and were not presented earlier because Applicants believed that their prior responses had placed the application in condition for allowance, for at least the reasons discussed in those responses.” *Id.* The Examiner finds the argument unpersuasive. 37 CFR §1.111(c) states:

In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

In other words, Applicant is required to put forth claims that he believes are patentable over the prior art in *every* reply. Therefore, the fact that Applicant believed previous responses placed the application in condition for allowance is irrelevant to the question of “good and sufficient reasons why the amendment is necessary and was not earlier presented”. The Examiner additionally notes that no new references were used in the rejection of claims presented in the Final Rejection mailed 5/12/2008. Considering

these facts, Applicant's argument to enter amendments after final rejection is unpersuasive.

3. Because the remainder of Applicant's arguments are directed toward non-entered subject matter, those arguments are moot. The application has claims 1-10, 21-26 and 34-39 pending. The claims remain rejected as indicated in the Final Rejection. The proposed amendments would be entered if submitted in a proper reply.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. McCulloch whose telephone number is (571) 272-2818. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. H. M./  
Examiner, Art Unit 3714  
7/22/2008

/Corbett Coburn/  
Primary Examiner  
AU 3714